

117TH CONGRESS
1ST SESSION

H. R. 5125

To amend title XI of the Social Security Act to clarify parameters for model testing and add accountability to model expansion under the Center for Medicare and Medicaid Innovation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 27, 2021

Mr. SMITH of Nebraska (for himself, Mr. BUCHANAN, Mr. WENSTRUP, and Mr. SMITH of Missouri) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, and Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title XI of the Social Security Act to clarify parameters for model testing and add accountability to model expansion under the Center for Medicare and Medicaid Innovation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Strengthening Innova-
5 tion in Medicare and Medicaid Act”.

1 **SEC. 2. SENSE OF CONGRESS.**

2 It is the sense of Congress that:

3 (1) The Center for Medicare and Medicaid In-
4 novation (CMI) represents a valuable tool for testing
5 innovative health care payment and service delivery
6 models which can improve the coordination, quality,
7 and efficiency of health care services.

8 (2) The model testing process is intended to
9 test concepts on a limited scale first in Phase I, then
10 assess initial results, and, if results merit, expand
11 the model to a larger test in Phase II to confirm the
12 initial results.

13 (3) Starting model testing on a limited scale,
14 assessing results, and then expanding the model to
15 confirm initial results protects the integrity of the
16 Medicare program by minimizing unintentional
17 losses or negative impacts to the patients or pro-
18 viders participating in Phase I model testing.

19 (4) CMI should focus its attention on models
20 most likely to succeed and should continually assess
21 models and terminate those which are not gener-
22 ating results in keeping with its purpose—lowering
23 costs while maintaining or preserving patient out-
24 comes.

25 (5) Mandatory models may be necessary to test
26 certain payment models but should be used judi-

1 ciously and be as limited in scope as possible to min-
2 imize accidental adverse impacts.

3 (6) As CMI may waive certain provisions of
4 Medicare regulations, Congress may block models
5 which functionally alter or change the underlying ex-
6 isting statutes.

7 **SEC. 3. DEFINING CMI MODEL TESTING PARAMETERS.**

8 (a) SCOPE AND DURATION OF MODELS.—Section
9 1115A(a) of the Social Security Act (42 U.S.C. 1315a(a))
10 is amended by adding at the end the following new para-
11 graph:

12 “(6) SCOPE AND DURATION OF MODELS TEST-
13 ED.—beginning on or after the date of the enact-
14 ment of the Strengthening Innovation In Medicare
15 and Medicaid Act, for purposes of testing new pay-
16 ment and service delivery models, the Secretary shall
17 limit testing of a Phase 1 model to—

18 “(A) a period not to exceed 5 years; and
19 “(B) to the lesser of ten percent of appli-
20 cable individuals or 500,000 beneficiaries.”.

21 (b) CAP ON PHASE 1 MODEL TESTING.—Section
22 1115A(a) of the Social Security Act (42 U.S.C. 1315a(a)),
23 as amended by subsection (a), is further amended by add-
24 ing at the end the following new paragraph:

1 “(7) PHASE 1 MODEL LIMITATIONS.—During
2 each fiscal year starting with Fiscal Year 2023, CMI
3 shall initiate Phase 1 testing of no more than six
4 new models each fiscal year. Additionally, CMI shall
5 not concurrently test more than five Phase 1 models
6 which involve mandatory, involuntary, or compulsory
7 participation.”.

8 (c) REQUIRED WAIVERS FOR HARDSHIP.—Section
9 1115A(a) of the Social Security Act (42 U.S.C. 1315a(a)),
10 as amended by subsection (a), is further amended by add-
11 ing at the end the following new paragraph:

12 “(8) HARDSHIP WAIVERS.—Not later than 60
13 days after the enactment of the Strengthening Inno-
14 vation in Medicare and Medicaid Act, the Secretary
15 shall develop and implement a plan to allow applica-
16 ble providers of services or supplies to request a
17 waiver from any requirement of a model if the Sec-
18 retary determines that such requirement would re-
19 sult in undue economic hardship to such provider or
20 supplier or loss of access to such healthcare services
21 or supplies for vulnerable populations.”.

22 (d) MONITORING IMPACT.—Section 1115A(a) of the
23 Social Security Act (42 U.S.C. 1315a(a)), as amended by
24 subsections (a) and (b), is further amended by adding at
25 the end the following new paragraph:

1 “(9) MONITORING IMPACT.—Not later than 60
2 days after the enactment of the Strengthening Inno-
3 vation in Medicare and Medicaid Act, the Secretary
4 shall develop and implement a plan to—

5 “(A) monitor continuously and on a real-
6 time basis the effect of a model under sub-
7 section (b) on applicable individuals, and miti-
8 gate any adverse impact, such as inappropriate
9 reductions in care or reduced access to care;

10 “(B) assess and track the impact of deliv-
11 ery and payment models on health disparities,
12 using existing measures such as, but not limited
13 to, the National Quality Forum Healthcare Dis-
14 parities and Cultural Competency Measures;
15 and

16 “(C) mitigate any adverse impact that the
17 Secretary determines could affect beneficiary
18 health.”.

19 **SEC. 4. IMPLEMENTATION OF TESTING AND EXPANSION OF**
20 **MODELS WITH CONGRESSIONAL INACTION.**

21 Section 1115A(d) of the Social Security Act (42
22 U.S.C. 1315a(d)) is amended by adding at the end the
23 following new paragraph:

1 “(4) IMPLEMENTATION OF TESTING AND EX-
2 PANSION OF MODELS WITH CONGRESSIONAL INAC-
3 TION.—

4 “(A) The Secretary shall transmit a pro-
5 posal for the testing, expansion, or modification
6 of a model under subsections (b) and (c), in-
7 cluding a proposed effective date and a sum-
8 mary of the determinations and certification
9 made under paragraphs (1) through (3) of sub-
10 section (c), if applicable, to the Committee on
11 Ways and Means and the Committee on Energy
12 and Commerce of the House of Representatives
13 and to the Committee on Finance and the Com-
14 mittee on Health, Education, Labor, and Pen-
15 sions of the Senate.

16 “(B) The testing, expansion, or modifica-
17 tion of a model proposed in a report submitted
18 under subparagraph (A) shall be carried out by
19 the Secretary if Congress does not, within 45
20 days of receiving such report, pass a joint reso-
21 lution disapproving of the proposed testing or
22 expansion in accordance with the following pro-
23 cedure:

24 “(i) The succeeding subparagraphs of
25 this paragraph are enacted by Congress as

1 an exercise of the rulemaking power of the
2 Senate and the House of Representatives,
3 respectively, and as such they shall be
4 deemed a part of the rules of each House,
5 respectively, but applicable only with the
6 respect to the procedure to be followed in
7 that House in the case of resolutions de-
8 scribed in subparagraph (B). They shall
9 supersede other rules only to the extent
10 that they are inconsistent therewith. They
11 are enacted with full recognition of the
12 constitutional right of either House to
13 change the rules (so far as relating to the
14 procedure of that House) at any time, in
15 the same manner and to the same extent
16 as in the case of any ruse of that House.

17 “(ii) For the purpose of the suc-
18 ceeding paragraphs of this subsection, ‘res-
19 olution’ means only a joint resolution, the
20 matter after the resolving clause of which
21 is as follows: ‘That Congress disapproves
22 the model expansion requested pursuant to
23 section 1115A(c) of the Social Security Act
24 transmitted by the Secretary on
25 _____’, and such an expansion shall

1 not proceed.', the blank space therein
2 being filled with the date on which the Sec-
3 retary's message proposing such expansion
4 was delivered.

5 “(iii) Upon receipt of a report sub-
6 mitted to Congress under subparagraph
7 (c)(4), each House shall provide copies of
8 the report to the chairman and ranking
9 member of the Committee on Ways and
10 Means and the Committee on Energy and
11 Commerce of the House of Representatives
12 and to the Committee on Finance and the
13 Committee on Health, Education, Labor,
14 and Pensions of the Senate.

15 “(iv) A resolution shall be referred to
16 the Committee on Ways and Means and
17 the Committee on Energy and Commerce
18 of the House of Representatives and to the
19 Committee on Finance and the Committee
20 on Health, Education, Labor, and Pen-
21 sions of the Senate.

22 “(v) If a committee to which has been
23 referred a resolution has not reported it
24 before the expiration of 10 legislative days
25 after its introduction, it shall then (but not

1 before) be in order to move to discharge
2 the committee from further consideration
3 of that resolution, or to discharge the com-
4 mittee from further consideration of any
5 other resolution with respect to the pro-
6 posed expansion which has been referred to
7 the committee. The motion to discharge
8 may be made only by a person favoring the
9 resolution, shall be highly privileged (ex-
10 cept that it may not be made after the
11 committee has reported a resolution with
12 respect to the same proposed expansion),
13 and debate thereon shall be limited to not
14 more than 1 hour, to be divided equally be-
15 tween those favoring and those opposing
16 the resolution. An amendment to the mo-
17 tion is not in order, and it is not in order
18 to move to reconsider the vote by which
19 the motion is agreed to or disagreed to. If
20 the motion to discharge is agreed to or dis-
21 agreed to, the motion may not be renewed,
22 nor may another motion to discharge the
23 committee be made with respect to any
24 other resolution with respect to the same
25 proposed expansion.

1 “(vi) When the committee has re-
2 ported, or has been discharged from fur-
3 ther consideration of a resolution, it is at
4 any time thereafter in order (even though
5 a previous motion to the same effect has
6 been disagreed to) to move to proceed to
7 the consideration of the resolution. The
8 motion is highly privileged and is not de-
9 batable. An amendment to the motion is
10 not in order, and it is not in order to move
11 to reconsider the vote by which the motion
12 is agreed to or disagreed to. Debate on the
13 resolution shall be limited to not more than
14 2 hours, which shall be divided equally be-
15 tween those favoring and those opposing
16 the resolution. A motion further to limit
17 debate is not debatable. An amendment to,
18 or motion to recommit, the resolution is
19 not in order, and it is not in order to move
20 to reconsider the vote by which the resolu-
21 tion is agreed to or disagreed to.

22 “(vii) Motions to postpone, made with
23 respect to the discharge from committee,
24 or the consideration of, a resolution and
25 motions to proceed to the consideration of

1 other business shall be decided without de-
2 bate. Appeals from the decision of the
3 Chair relating to the application of the
4 rules of the Senate or the House of Rep-
5 resentatives, as the case may be, to the
6 procedure relating to a resolution shall be
7 decided without debate.

8 “(viii) COORDINATION WITH ACTION
9 BY THE OTHER HOUSE.—If, before the
10 passage by one House of a joint resolution
11 of that House, that House receives from
12 the other House a joint resolution, then
13 the following procedures shall apply:

14 “(I) The joint resolution of the
15 other House shall not be referred to a
16 committee.

17 “(II) With respect to a joint res-
18 olution of the House receiving the res-
19 olution, the procedure in that House
20 shall be the same as if no joint resolu-
21 tion had been received from the other
22 House; but the vote on passage shall
23 be on the joint resolution of the other
24 House.

1 “(ix) If one House fails to introduce
2 or consider a joint resolution under this
3 section, the joint resolution of the other
4 House shall be entitled to expedited floor
5 procedures under this section.

6 “(x) If, following passage of the joint
7 resolution in the Senate, the Senate then
8 receives the companion measure from the
9 House of Representatives, the companion
10 measure shall not be debatable.

11 “(xi) If Congress passes a joint reso-
12 lution, the period beginning on the date
13 the President is presented with the joint
14 resolution and ending on the date the
15 President takes action with respect to the
16 joint resolution shall be disregarded in
17 computing the 45-calendar day period de-
18 scribed in subsection (c)(4).

19 “(xii) If the President vetoes the joint
20 resolution—

21 “(I) the period beginning on the
22 date the President vetoes the joint
23 resolution and ending on the date the
24 Congress receives the veto message
25 with respect to the joint resolution

1 shall be disregarded in computing the
2 45-calendar day period described in
3 subsection (c)(4), and

4 “(II) debate on a veto message in
5 the Senate under this section shall be
6 1 hour equally divided between the
7 majority and minority leaders or their
8 designees.”.

9 **SEC. 5. PUBLIC INPUT.**

10 Section 115A(d) of the Social Security Act (42
11 U.S.C. 1315a(d)) is amended by Section 3, is further
12 amended by adding at the end of the following new para-
13 graphs:

14 “(5) PUBLIC INPUT.—The Secretary shall use a
15 process involving advance public notice and an op-
16 portunity for stakeholder input and public comments
17 to ensure transparency and accountability regarding
18 the establishment, testing, implementation, evalua-
19 tion, and expansion of a model under section
20 1115A(b) and (c). Such public notice shall describe
21 and define the standards, criteria, and processes
22 that the Secretary will use for selecting and evalu-
23 ating—

24 “(A) during initial stages of model develop-
25 ment;

1 “(B) prior to testing under subsection
2 (b)(1);

3 “(C) prior to modification of non-contra-
4 ctual models under subsection (b)(3)(B); and

5 “(D) following evaluation of a model under
6 subsection (b)(4) and prior to rulemaking under
7 subsection (c).

8 Such notice shall explain the basis for the Sec-
9 retary’s determination that the conditions set forth
10 in section 115A(c) of the Social Security Act (42
11 U.S.C. 1315a(c)) have been met. Additionally, the
12 notice shall explain the basis for selection and the
13 standards established by the Secretary under the
14 regulations issued under paragraph (1), and any ad-
15 ditional factors that will be used to test the model’s
16 impact on quality of care, patient-centeredness, and
17 innovation. The notice shall provide a minimum 45-
18 day period for public comment. The Secretary shall
19 take stakeholder comments into consideration when
20 determining whether or how to refine the model or
21 whether to proceed with testing under subsection
22 (b)(1).

23 “(6) CONSULTATION.—In carrying out the du-
24 ties under this subsection, the CMI shall consult
25 representatives of relevant Federal agencies, and

1 clinical and analytical experts with expertise in medi-
2 cine and health care management, specifically such
3 experts with expertise in—

4 “(A) the health care needs of minority,
5 rural and underserved populations; and

6 “(B) the financial needs of safety net,
7 community-based, rural, and critical access pro-
8 viders, including federally qualified health cen-
9 ters.

10 The CMI shall use open door forums or other mech-
11 anisms to seek external feedback from interested
12 parties and incorporate that feedback into the devel-
13 opment of models.”.

14 **SEC. 6. REESTABLISHING JUDICIAL REVIEW.**

15 Section 1115A(g) of the Social Security Act (42
16 U.S.C. 1315a(g)) is amended—

17 (1) in the matter preceding subparagraph (A)
18 by inserting after “or otherwise” the following: “(ex-
19 cept as may be necessary to enforce requirements of
20 this section or other laws or constitutional provisions
21 intended to protect beneficiaries of affected pro-
22 grams)”;

23 (2) by striking subparagraph (C);

24 (3) in subparagraph (D), by adding at the end
25 “; and”;

- 1 (4) by redesignating subparagraph (D) as sub-
2 paragraph (C);
3 (5) in subparagraph (E), at the end, by striking
4 “; and”;
5 (6) by redesignating subparagraph (E) as sub-
6 paragraph (D); and
7 (7) by striking subparagraph (F).

8 **SEC. 7. REVISION OF REPORTING REQUIREMENT.**

9 Section 1115A(g) of the Social Security Act (42
10 U.S.C. 1315a(g)) is amended—

11 (1) by striking “and not less than once every
12 other year thereafter” and inserting “and, for years
13 before 2020, not less than once biennially (and, for
14 years beginning with 2020, not less than annually)
15 thereafter”; and

16 (2) by adding at the end the following new sen-
17 tence: “With respect to 2020 and each subsequent
18 year, the Secretary shall submit each such report by
19 not later than December 15 of such year.”.

20 **SEC. 8. ADDRESSING OVERLAP IN VALUE-BASED CARE PRO-**

21 **GRAMS.**

22 (a) IN GENERAL.—

23 (1) CMI.—Section 1115A(a)(5) of the Social
24 Security Act (42 U.S.C. 1315a(a)(5)) is amended by
25 adding at the end the following new sentence: “In

1 establishing such limits, the Secretary shall take into
2 account payment and service delivery models in
3 progress in such geographic areas.”.

4 (2) REPEAL OF MEDICARE DUPLICATION PRO-
5 HIBITION.—Section 1899(b) of the Social Security
6 Act (42 U.S.C. 1395jjj(b)) is amended by striking
7 paragraph (4)(A).

8 (b) REPORT.—Not later than 60 days after the date
9 of the enactment of this Act, the Secretary of Health and
10 Human Services shall conduct an assessment and submit
11 to Congress a report on alternative payment model overlap
12 under the Medicare program under title XVIII of the So-
13 cial Security Act. Such report shall include a description
14 of and recommendations relating to—

15 (1) appropriate participation in multiple alter-
16 native payment models for health care providers;

17 (2) feasibility of adequate evaluation of alter-
18 native payment models if participants are partici-
19 pating in multiple arrangements; and

20 (3) obstacles created by competing incentives
21 with respect to alternative payment models.

22 **SEC. 9. MODEL ELIGIBILITY AND QUALITY OF CARE.**

23 (a) CLARIFICATION OF MODEL ELIGIBILITY.—Sec-
24 tion 1115A of the Social Security Act (42 U.S.C. 1315a)
25 is amended—

1 (1) by striking “also” before “improve”; and
2 (2) in subsection (b)(2)(A), by inserting after
3 the second sentence the following new sentence:
4 “The Secretary may also focus on models solely
5 aimed at implementing practices to demonstrate ways to
6 significantly improve the care, patient safety, and health
7 outcomes of individuals receiving benefits under the appli-
8 cable title in anticipation that quality of care benefits and
9 potential direct or indirect savings will over time accrue
10 to the Medicare or Medicaid program.”.

11 (b) ADDITIONAL OPPORTUNITY.—Section
12 1115A(b)(2)(B) of the Social Security Act (42 U.S.C.
13 1315a(b)(2)(B)) is amended by adding at the end the fol-
14 lowing new clause:

15 “(xxviii) Implementing newly recog-
16 nized and evidence-based, professionally
17 supported care delivery practices and bun-
18 dles to improve the efficient and effective
19 delivery of hospital-based care and lead to
20 enhanced patient outcomes, reductions in
21 readmissions, or avoidance of costly med-
22 ical errors or complications.”.

23 (c) INCLUSION OF INDIRECT SAVINGS.—Section
24 1115A(b)(3)(A) of the Social Security Act (42 U.S.C.
25 1315a(b)(3)(A)) is amended by inserting at the end “or

1 that savings cannot be made indirectly over time when
2 testing quality of care delivery models.”.

3 (d) EVALUATING QUALITY OF CARE.—Section
4 1115A(b)(4) of the Social Security Act (42 U.S.C.
5 1315a(b)(4)) is amended—

6 (1) in subparagraph (A), by amending clause (i)
7 to read as follows:

8 “(i) the quality of care furnished
9 under the model, including the measure-
10 ment of patient-level outcomes, patient-
11 centeredness, and any unintended con-
12 sequences, such as access to services, using
13 criteria determined appropriate by the Sec-
14 retary for each model; and”;

15 (2) in subparagraph (C), by striking “and” be-
16 fore “patient-centered care” and inserting “, are ap-
17 propiate to issues of quality outcomes related to the
18 medical conditions under study, and are”.

19 **SEC. 10. GAO REPORT.**

20 Not later than 12 months after the date of enactment
21 of this Act, the Comptroller General of the United States
22 shall submit to Congress a report on the efforts of the
23 Center for Medicare and Medicaid Innovation to attract,
24 retain, and develop emerging experts, including underrep-
25 resented individuals in medicine, such as women, racial

1 and ethnic minorities, and other groups. Such report shall
2 include an analysis of the role minority staff play in model
3 development and operational decisions on an ongoing
4 bases and of the impact of the existing authority provided
5 to the Center for Medicare and Medicaid Innovation to
6 address workforce shortages and gaps in priority areas.

7 **SEC. 11. EFFECTIVE DATE.**

8 Except as otherwise provided in the previous sections
9 of this Act (or the amendments made by such sections),
10 such amendments shall apply with respect to the testing,
11 expansion, or modification of models on or after January
12 1, 2022.

